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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,252	01/23/2004	Yang Wang		8020
7590	12/29/2004		EXAMINER	
YANG WANG 7 Black Bear Lane WESTFORD, MA 01886			VANORE, DAVID A	
			ART UNIT	PAPER NUMBER
			2881	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/764,252	WANG, YANG
	Examiner	Art Unit
	David A Vanore	2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 October 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5, 7-15, 17-26, 29-31, 33-35, 37-39, 41-45, 47-55 and 59-67 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-5, 7-15, 17-26, 29-31, 33-35, 37-39, 41-45, 47-55, 59-67 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Applicant's election with traverse of Species I in the reply filed on October 26, 2004 is acknowledged. The traversal is on the ground(s) that the claimed species are coherently connected and there is therefore no serious burden to search all claims.

This is not found persuasive because of the following:

In light of the amendment to the claims and the remarks tendered by the applicant, the examiner, for purposes of clarification of the election of species, makes the following remarks.

Applicant points out the grounds for traversal beginning at page 4 of the remarks submitted in the most recent reply.

Applicant first states that the main inventive concept is a nonlinear (three dimensional or two dimensional) ion trap. Examiner at this point in the remarks notes that a three dimensional ion trap and two dimensional ion trap operate in physically different modes and produce fundamentally different effects. A three dimensional ion trap is a different species of ion trap than a two dimensional ion trap. Applicant points out the further inventive concept of an ion trap switchable between three dimensional mode and two dimensional mode. Regarding this further inventive concept, the examiner notes that applicant points out that this is a further, and different dependent concept. While it is noted that the remarks refer to the switchable ion trap as a dependent concept, the concept requires structural elements and their associated methods of use to articulate to function of switching from one mode of ion trapping to another. Therefore, the concept is not apparently dependent on the first two concepts,

but rather constitutes a fundamentally different concept and embodiment. These elements are not endemic to the three dimensional trap alone, nor are they endemic to the two dimensional trap alone. The switchable ion trap constitutes a third inventive concept.

As pointed out at MPEP 806.04(e), claims are never species and species constitute different embodiments. The examiner therefore invites the applicant to point out the claims corresponding to one of the species pointed out by Applicant in the remarks submitted in the latest response.

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: A non-linear three dimensional ion trap.

Species II: A non-linear two dimensional ion trap.

Species III: A non-linear ion trap switchable between two dimensional and three dimensional mode by cutting a ring electrode into multiple operational pieces.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

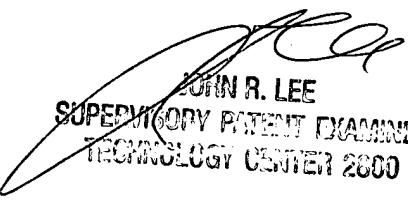
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Vanore whose telephone number is (571) 272-2483. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on (571) 272-2477. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dav



JOHN R. LEE
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